

Re Item V

Reasoned statement according to Article 35(2) PCT with regard to novelty, inventive step and commercial applicability; documents and explanations to support this statement

1. Reference is made to the following documents:

D1: US-A1-2002064147
D2: US-A1-2002073204
D3: WO-A-0077637

2. The present application does not meet the requirements of Article 33(1) PCT, because the subject matter of claim 1 is not based on an inventive step within the meaning of Article 33(3) PCT.

Document D1 is considered to be the closest prior art in respect of the subject matter of the changed, independent claim 1. In the mode of expression of the present application, it discloses the following (the references in brackets relate to this document): a method for selecting resources in communication networks, having communication components which use the resources in the network (paragraph 14), where a plurality of resources provide the communication components with the same function (paragraph 29), where the functions and statements about the performance of a plurality of or all resources are ascertained by a communication component and are stored in at least one database (paragraph 39, lines 10-14) and the resource is selected on the basis of the resource-specific information stored in the database (paragraph 38, lines 9-16).

The subject matter of claim 1 therefore differs from the known method in that i.) when a resource is being used by a communication component the database is used to store resource-specific information about the use of this resource and ii.) the resource is also selected on the basis of statistical information about the previous use of this resource.

The object to be achieved by means of the present invention may thus be regarded as being how to provide an extended spectrum of regulatory parameters for the selection of resources.

The solution proposed in claim 1 of the present application cannot be regarded as being an inventive step for the following reasons (Article 33(3) PCT):

However, these features have already been used for the same purpose in a similar selection method for network elements, cf. document D2 in this regard, particularly paragraphs 51 and 70 for feature i.) and paragraphs 59 and 73 for feature ii.). If the person skilled in the art wishes to achieve the same purpose for a transmission method based on document D1, he is readily able to apply the features with corresponding effect in the case of the subject matter of document D1 too. In this way, he would arrive at a resource selection method with extended regulatory parameters in line with claim 1 without any inventive step.

The subject matter of **independent claim 1 is therefore not based on an inventive step** within the meaning of Article 33(3) PCT.

In addition, it should be noted that document D2 fundamentally discloses an application for interchanging user data (files). As part of this application, however, there is an explicit selection of network elements (i.e. resource selection) which are to be used for this application (D2, paragraph 73). In this context, the network elements have the common function of providing the user data required for the application. Another fundamental feature in this context is that the selection of the network elements is made on the basis of characteristics and parameters which also relate to the network elements which are to be selected themselves (D2, paragraph 59).

3. Dependent claims 2-10 contain no features which, in combination with the features of any claim to which they relate, meet the requirements of the PCT in terms of novelty or inventive step. The reasons for this are as follows:
 - Claim 2:** the statistical evaluation of the resource-specific information is known from document D2 (D2, paragraphs 49 and 59).
 - Claim 3:** document D1 cites the traffic load of the resources and the usage costs as resource-specific information (D1, paragraph 38, lines 12-16).
 - Claim 4:** the provision of information between the communication components is known from document D2 (D2, paragraph 37).
 - Claim 5:** the network elements in the system based on document D2 contain

both client and server components (D2, paragraph 34).

Claim 6: document D2 describes an integrated search function for ascertaining the addresses of resources (D2, paragraph 44).

Claim 7: the determination of the performance of a resource on the basis of the reaction time is known from document D3 (D3, p. 2, lines 15-19).

Claim 8: the determination of the performance of a resource on the basis of the current utilization level is known from document D1 (D1, paragraph 38, lines 12-13).

Claim 9: the selection of a redundancy if a resource fails is known from document D3 (D3, p. 3, lines 5-9).

Claim 10: document D1 describes the periodic ascertainment of resources (D1, paragraph 39, lines 10-13).

4. Independent claim 11 for a computer program product for carrying out a method as claimed in claims 1 to 10 contains a mere repetition of the features of these claims, expressed in modules of a computer program of this type. The implementation of such methods as a computer program is fundamentally known, cf. document D2, paragraph 77, for example. For this reason, the aforementioned arguments in respect of the inventive step of claims 1 to 10 apply in corresponding fashion to claim 11. Consequently, the subject matter of independent **claim 11 is not based on an inventive step** within the meaning of Article 33(3) PCT.